



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/981,790

10/19/2001

Todd J. Mortier

10931.0003-01

6743

22852

7590

09/15/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP

901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

09/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 3738

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 60-62, 64, 66, 67, 83, 84, 87, and 88 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Melvin, US 5,957,977. Regarding claim 83 and others, Melvin discloses securing a ring **56** “suprajacent” the *in situ* mitral valve annulus in the left atrium **16** (column 4, line 66, to column 5, line 3), securing a first elongate member **86** indirectly through the ring **56** itself and also directly by passing said elongate member through the mitral valve annulus and through a wall of natural heart **10** to connect with yoke **70** (column 5, lines 55-58; Figures 2 and 4), and securing a second elongate member **86** to an opposing heart wall. It is noted that the term “associated” (instant claim 83, line 7) is quite broad and, under the rules of English grammar, may be interpreted as modifying “left ventricle” rather than “first heart structure”. Regarding claim 62, attention is directed to column 8, lines 8-12. Regarding claim 66, the third elongate member corresponds to the septal frame **53** or to another (third) one of the cords **86**. Regarding claim 84 and others, drawing papillary muscles toward the *in situ* mitral valve would have been

Art Unit: 3738

inherent from the tightening of the cords or elongate members **86** (column 8, lines 40-43).

Regarding claim 87 and others, the suture strands **55** and the struts of the septal frame **53** can pass through bases of papillary muscles (column 8, lines 13-24).

Claims 68 and 85-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melvin, US 5,957,977. Passing one or more of the cords or elongate members **86** through a base of a papillary muscle would have been obvious in order to help ensure proper functioning of the *in situ* mitral valve, with the ordinary practitioner having been motivated by Melvin's concern for maintaining the chordae in a proper configuration (column 5, lines 14-15; column 2, lines 51-54).

Applicant's remarks have been considered but are deemed to be moot in view of the new grounds of rejection, necessitated by the extensive revisions to the claims. Therefore:

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who

Art Unit: 3738

is generally available Monday through Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/David H. Willse/
Primary Examiner
Art Unit 3738**